

July 11, 2002

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

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REPORT AND DECISION ON SHORT PLAT APPEAL

SUBJECT: Department of Development and Environmental Services File No. **L01S0040**

BIRDSALL SHORT SUBDIVISION
Short Plat Appeal

Location: Between approximately South 312th Street and South 312th Place, on
Military Road South

Appellant: Leo Birdsall, *represented by*
Robert Parnell
RN Parnell Company
4422 – 187th Place SE
Issaquah, WA 98027
Telephone: 425-643-3560
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King County: Department of Development and Environmental Services,
Land Use Services Division, Current Planning Section,
represented by **Tom Slade**
935 Oakesdale Avenue Southwest
Renton, WA 98055-1219
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SUMMARY OF DECISION/RECOMMENDATIONS:

Department's Preliminary Recommendation: Deny appeal
Department's Final Recommendation: Deny appeal
Examiner's Decision: Deny appeal

EXAMINER PROCEEDINGS:

Hearing Opened: June 27, 2002
Hearing Closed: June 27, 2002

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

ISSUES/TOPICS ADDRESSED:

- Sewage disposal in the Urban Growth Area

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. On March 15, 2002, the King County Department of Development and Environmental Services (DDES) issued a preliminary short plat approval to the Birdsall Short Subdivision (file no. L01S0040) approving the creation of four lots on 1.78 acres in the R4 zone. The property is currently a rural residential parcel with an existing single-family home. It is located at the southwest corner of the intersection of Military Road South and South 312th Street, east of the city of Federal Way. Condition number three of the short plat approval requires the lots within the subdivision to be served by sanitary sewer.
2. Engineer Robert Parnell, on behalf of the property owner Leo Birdsall, filed a timely appeal of the preliminary short plat approval. The appeal challenges DDES's requirement that the short plat be served by a sanitary sewer and contends that County regulations allow it to be served by individual lot septic systems. The appeal also raised issues concerning the road dedication and design requirements for the short plat, but those issues have been resolved. A pre-hearing conference was held on the appeal and a pre-hearing order issued by the Hearing Examiner's office on May 23, 2002. The hearing on the appeal was held on June 27, 2002.
3. As indicated by the record, the first documented actions with respect to the short plat application occurred on January 18, 2001, when certificates of water and sewer availability were issued by the Lakehaven Utility District to Mr. Birdsall for a four lot development. The certificate of sewer availability notes that sewage disposal for the property will require either installation of approximately 2500 feet of new sewer line or the construction of an on-site collection system.
4. Mr. Birdsall filed his short plat application with DDES on August 21, 2001. On August 30, 2001, DDES planner Tom Slade sent a letter to Mr. Birdsall's engineer, Mr. Parnell, notifying him that as of March 12, 2001, the King County Council had revised portions of Title 13 of the County code dealing with on-site sewage disposal with the consequence that "short subdivisions within the urban growth area no longer are permitted to use interim on-site sewage disposal systems." He advised Mr. Parnell that, "conditions of approval will include extension of sanitary sewer to the proposal site and that no on-site sewage disposal will be permitted." Finally, the letter states that if the short subdivision application is withdrawn before further processing occurs, some portion of the application fees would be refundable. On the same date, Mr. Slade sent an email to other members of the DDES short

plat review staff instructing them not to do any further work on the Birdsall application unless the Applicant agrees to the extension of the sewer main to the site. The Appellant disagreed with Mr. Slade's interpretation of the code requirements and directed DDES staff to continue processing the short plat application.

5. At the public hearing on this appeal, Mr. Birdsall testified that at some point prior to filing his short plat application he visited DDES and was told by a technician at the intake counter that his property could be divided as proposed. He stated that he was not informed of the new rules on on-site septic use and was merely told that he needed a letter from the utility district supporting septic use. Mr. Birdsall felt this information was misleading, but without knowing whether the conversation took place before or after March 12, 2001, the accuracy of the information at the time it was given cannot be evaluated.
6. As requested by the Appellant, DDES continued to process the Birdsall short plat application. The application was deemed complete for vesting purposes on September 14, 2001. The record indicates that a preliminary septic design approval was obtained from the Health Department on November 16, 2001, and that on December 6, 2001, the paperwork for issuance of a certificate of future connection was completed by the Lakehaven Utility District.

CONCLUSIONS:

1. The issue of whether interim on-site sewage disposal systems are currently permitted within the King County Urban Growth Area can best be understood by analyzing the sewage disposal requirements within the context of the overall short plat review and approval process. KCC 19A.08.060 requires that applications for short subdivisions be reviewed in accordance with a long list of County and State rules, regulations, plans, and policies. This list includes the sewer and water provisions of KCC Title 13, the zoning regulations of KCC Title 21A, and the King County Comprehensive Plan.
2. KCC Chapter 21A.28 sets out the development standards for determining the adequacy of public facilities and services, including sewage disposal and water supply. KCC 21A.28.030 requires that "all new development shall be served by an adequate public or private sewage disposal system." Subsection A of this provision indicates that a public sewage disposal system shall be deemed adequate for a development proposal if "for the issuance of a building permit, preliminary plat or short plat approval or other land use approval, the site of the proposed development is or can be served by an existing disposal system consistent with KCC Title 13...." Subsection B of KCC 21A.28.030 allows that a private individual sewage system shall be considered adequate if for any individual building lot it meets Health Department design standards.
3. A series of overlapping provisions within KCC Title 13 (as amended by Ordinance 14049) govern the provision of sewer service in the Urban Growth Area. KCC 13.24.035.A states that "all development within the urban growth area shall be served by public sewer service except on-site sewage systems may be allowed temporarily in some parts of the urban growth area in accordance with KCC 13.24.136 and 13.08.070." For its part, KCC 13.08.070 provides that "in the urban growth area, no new on-site sewage systems shall be allowed, except as specifically permitted under KCC 13.24.136." For our purposes, then, all roads lead to KCC 13.24.136.

4. The operative language of KCC 13.24.136 is the following: “On-site sewage treatment and disposal systems shall be permitted in the urban growth area only for single-family residences..., only on an interim basis and only as follows.” Subsection A of KCC 13.24.136 then sets out the standards for on-site sewage disposal on individual lots. This service may be approved when the requirement that all development in the Urban Growth Area be served by public sewers “would deny all reasonable use of an individual lot.” If that standard is met, an applicant next must submit a certificate of sewer availability from the sewer provider stating that the utility finds the requirement to receive public sewer service to be “unreasonable or infeasible at the time of construction.” Further requirements applicable to individual lots are that the applicant shall provide the utility with a certificate of future connection requiring sewer hookup when such becomes available to the property and receive approval for the on-site system design from the Health Department.
5. In summary, it is clear that the subdivision ordinance requires short subdivisions to comply with both zoning and sewer and water code requirements. The zoning code considers a short plat to be a development requiring adequate provision for sewer and water service consistent with Title 13. Title 13 in turn requires all new development in the Urban Growth Area to hook up to public sewer service and only allows interim use of on-site systems for individual lots where no reasonable use of the property is otherwise feasible. While a short plat application may eventually result in the creation of individual lots, the application itself is a development proposal that must meet the Urban Growth Area requirement for sewer service. Although the ordinance provisions do not specifically limit the use of temporary on-site septic systems to “existing” individual lots, that is the clear implication of the regulatory scheme. New individual lots do not come into existence until a plat is approved, and in the Urban Growth Area act a plat cannot be approved unless sewer service is available. This precludes the creation of new lots without sewer service in the Urban Growth Area and necessarily operates to limit interim septic use to lots in existence at the time the more restrictive requirement was adopted.
6. The various reasonable use provisions of KCC 13.24.136 and their concomitant requirements for certificates of future connection, certificates of sewer availability, and Health Department design approval are simply not available to a short plat application in the Urban Growth Area. Accordingly, the fact that the Appellant has run through these bureaucratic hoops and obtained the certifications recited in KCC 13.24.136 is of no consequence.
7. The regulatory discussion provided above is also consistent with King County Comprehensive Plan policy F-239, which states that “in the Urban Growth Area, all new development shall be served by public sewers unless application of this policy to a proposal for a single-family residence on an individual lot would deny all reasonable use of the property.”
8. The Birdsall Short Subdivision is a development proposal in the Urban Growth Area for which a complete application was filed after the effective date of Ordinance 14049. Its construction therefore requires that the newly created lots obtain sewer service in the manner stated in the DDES preliminary approval dated March 15, 2002.

DECISION: The short plat appeal is DENIED.

ORDERED this 11th day of July, 2002.

Stafford L. Smith
King County Hearing Examiner

TRANSMITTED this 11th day of July, 2002, to the parties and interested persons of record:

Edward Beckman 31058 Military Road South Auburn WA 98001-3218	Leo Birdsall 24118 NE 30th Place Sammamish WA 98074	Dale Colvin 3405 S 312th Auburn WA 98001
Bill Eichholtz 31233 Military Road South Auburn WA 98001	David F. Jensen 17530 NE Union Hill Rd., #100 Redmond WA 98052	Robert N. Parnell RN Parnell Company 4422 - 187th Place SE Issaquah WA 98027
Charles Wexler 5519 Paseo Del Lago E, #2H Luguna Woods CA 92653 Section	Greg Borba DDES/LUSD MS OAK-DE-0100	Curt Foster DDES/LUSD Engineering Review MS OAK-DE-0100
Rich Hudson DDES/LUSD Current Planning MS OAK-DE-0100	Carol Rogers LUSD/CPLN MS OAK-DE-0100	Tom Slade DDES/Current Planning MS OAK-DE-0100

NOTICE OF RIGHT TO APPEAL

The action of the hearing examiner on this matter shall be final and conclusive unless a proceeding for review pursuant to the Land Use Petition Act is commenced by filing a land use petition in the Superior Court for King County and serving all necessary parties within twenty-one (21) days of the issuance of this decision. The Land Use Petition Act defines the date on which a land use decision is issued by the Hearing Examiner as three days after a written decision is mailed.

MINUTES OF THE JUNE 27, 2002 PUBLIC HEARING ON DEPARTMENT OF
DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. L01S0040; BIRDSALL
SHORT PLAT.

Stafford Smith was the Hearing Examiner in this matter. Participating in the hearing were Tom Slade and Curt Foster, representing the Department; Robert N. Parnell, representing the Appellant; and Leo Birdsall and Tom Jensen.

The following exhibits were offered and entered into the record:

- Exhibit No. 1 DDES conditions of approval for short subdivision L01S0040 dated March 15, 2002
- Exhibit No. 2 Short Subdivision Application
- Exhibit No. 3 Preliminary Short Plat Map
- Exhibit No. 4 Assessor's Map
- Exhibit No. 5 Short Subdivision Application File L01S0040
- Exhibit No. 6 GIS printout
- Exhibit No. 7 DDES Appeal report to the Hearing Examiner
- Exhibit No. 8 Letter dated 12/06/01 from Kathy Brown of the Lakehaven Utility District to Robert Parnell
- Exhibit No. 9 King County Certificate of Sewer Availability with attached locator maps (2), Certificate of Water Availability, and property purchase information sheet
- Exhibit No. 10 Letter dated 6/13/02 from Robert Parnell to Stanford Smith with attached maps (2)
- Exhibit No. 11 USGS Topographical Map
- Exhibit No. 12 Email dated 5/24/02 containing Seattle Times article by Eric Pryne regarding growth management
- Exhibit No. 13 Proposed KC Ordinance no. 2000-0191.2 attached to revised portions of the King County Comprehensive Plan
- Exhibit No. 14 Hearing Examiner's report and decision on Tarbox Short Subdivision dated 12/07/01
- Exhibit No. 15 Letter dated 8/30/01 from Tom Slade to R.N. Parnell with attached cover email from Tom Slade to M. Manion, C. Foster, and R. Hudson dated 8/30/01

SLS:mls
L01S0040 RPT